

No. 19-6333

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

TERM OF 2019 - 2020

JUAN GABRIEL ANGULO-CABRERA — PETITIONER
(Your Name)



vs.
UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITES STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

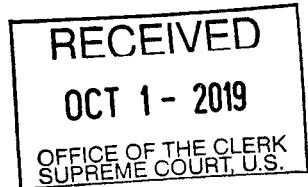
PETITION FOR WRIT OF CERTIORARI

Juan Gabriel Angulo-Cabrera #67351-112
(Your Name)

Federal Correctional Institution, 3600 Guard Road,
(Address)

Lompoc, California 93436
(City, State, Zip Code)

(None)
(Phone Number)



QUESTION(S) PRESENTED

- 1). Whether the District and Appellate Courts erred in denying Defendant an evidentiary hearing on his claim of ineffective assistance of trial counsel in violation of his Sixth Amendment right to an effective attorney at trial in failing to use available evidence, including phone records and a photo of a codefendant making the phone calls Defendant was being accused in making to refute the prosecutor's false accusations against him in front of the jury at trial;
- 2). Whether Defendant was denied his right to counsel of choice when at the last minute before trial was to commence retained attorney (Michael McDonnell) suddenly introduced another attorney (Peter Scalisi) who was unprepared and unfamiliar with the case to conduct trial, whom later the district court erroneously stated he was appointed in violation of Defendant's Sixth Amendment right to counsel of choice.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A [Ninth Circuit Court's 8/22/19 decision denying a C.W.O.A.].

APPENDIX B [District Court's 7/5/18 decision denying 28 U.S.C. §2255 Motion] without conducting an evidentiary hearing under the statute].

APPENDIX C [Photos of co-defendant making the actual phone calls Petitioner was wrongly accused of making by the prosecuting attorney and main Government's witness]

APPENDIX D [Actual Investigative Report of the main Government witness Detective CORTEZ detailing the true events in the investigation that contradict his own sworn statements in front of the jury].

APPENDIX E [(E(a) Unsigned/unauthorized Form G-01 submitted to the district court by attorney Scalisi; (E(b) Signed/authorized Form G-01 submitted by attorney McDonnell requesting permission to withdraw attorney]

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)...	3, 6
United states v. Gonzalez-Lopez, 548 U.S. 140 (2006).....	3
Kaufman v. United States, 394 U.S. 217 (1969).....	3
Blackledge v. Allison, 431 U.S. 63 (1977).....	5
United States v. Reyes-Bosque, 624 Fed. Appx. 529 (CA 9 2015)...	6
United States v. Leonti, 326 F.3d 1111 (CA 9, 2003).....	6
United Stats v. Howard, 381 F.3d 873 (CA 9, 2004).....	6
Guam v. Santos, 741 F.2d 1167 (CA 9, 1984).....	7

STATUTES AND RULES

28 U.S.C. §2255.....	3, 4, 6, 7, 8
21 U.S.C. §841(a)(1).....	4
21 U.S.C. §846.....	4
21 U.S.C. §841(b)(1)(A)(viii).....	4
18 U.S.C. §2.....	4
28 U.S.C. §2253(c).....	8

OTHER

Form G-01 [Request for approval of substitution or withdrawn of counsel].
Form G-123 [Notice of appearance or withdrawal of counsel]
Sixth Amendment right under the U.S. Constitution

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished. See C.A. No. 18-56521

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished. See D.C. Nos. 2:18-cv-00321-RGK;
2:13-cr-00889-GHK-2

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 22, 2019.

[x] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment right to effective assistance of trial counsel in a criminal prosecution articulated by this Court in *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984);

Sixth Amendment right by the denial of counsel of choice as this Court found in *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed. 402 (2006).

28 U.S.C. §2255(a) states:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming that right to be release upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively shows that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, **grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto....**

See *Kaufman v. United States*, 394 U.S. 217, 218 n.1 (1969) (Reversed).

28 U.S.C. §2253(c)(1)(b)(2) [Certificate of Appealability]

STATEMENT OF THE CASE

On October 8, 2013, Petitioner Juan Angulo-Cabrera (hereinafter "Petitioner"), among three other co-defendants were arrested at a parking lot in Fontana, California, within the Central District of California. On December 13, 2013, Petitioner was charged, among the co-conspirators in a four count indictment with violation of 21 U.S.C. §§846, 841(a)(1), 841(b)(1)(A)(viii)(conspiracy to distribute and possess with intent to distribute at least 50 grams of methamphetamine on or about 10/8/13)(Count 1); 18 U.S.C. §2, 21 U.S.C. §§841(a)(1), (b)(1)(A)(viii)(aiding and abetting possession with intent to distribute at least 50 grams, that is approximately 4,335 grams of methamphetamine on or about 10/8/13)(Count 2); 21 U.S.C. §841(b)(1)(A)(viii)(aiding and abetting possession with intent to distribute at least 50 grams, that is, approximately 43,120 grams, of methamphetamine on or about 10/8/13)(Count 3).

At trial, the evidence was riddled with lies, half-truths, inconsistencies, innuendoes, inferences from inferences and questionable circumstantial evidence, including photos of the co-defendant Ramiro GIL-GUERRA (a.k.a. "CHATO"), to rebut the prosecutor's misleading the jury in identifying Petitioner as the one who was making the phone calls to complete the sale and how the drugs would be delivered, and the Investigative Report prepared by the Government's main witness, Detective CORTEZ, to rebut the false accusation against Petitioner. **See Appendix "C".**

The evidence available to rebut the Government's false accusations against Petitioner were readily available to his trial attorney William Scalisi, but he failed to present it to the court in front of the jury, rendering deficient legal representation in violation of Petitioner's Sixth Amendment right to effective counsel. These evidence and arguments were presented to the District Court in Petitioner's initial 28 U.S.C. §2255 Motion, but the District Court failed to grant an evidentiary hearing to resolve the constitutional violations as demonstrated by the record facts, including the fact that the Government's main witness owns "Investigation Report" directly and blatantly contradicted his sworn statements in front of the jury that Petitioner was the person making the telephone calls to consummate the drug deal at the Fontana, CA., parking lot. **Appendix "D".**

In addition, Petitioner before trial hired criminal defense attorney Michael Roger McDonnell to represent him in his criminal trial but at the last minute, and without a notice to Petitioner suddenly introduced attorney William Scalisi as the person whom would be conducting his trial. Clearly, attorney Scalisi was totally unfamiliar with petitioner's case, rendering deficient representation both in violation of Petitioner's Sixth Amendment right to effective counsel and in effect to counsel of choice.

Indeed, during the time retained attorney Michael McDonnell visited Petitioner at the Federal Metropolitan Detention Center (MDC) in Los Angeles, Ca., to introduce attorney William Scalisi 4-5 days before the trial was to commence, Petitioner specifically refused to accept attorney Scalisi as his attorney because he had never had visited him to discuss the case in preparation for the trial and therefore felt he was unfamiliar with the case. The discussion over whether Petitioner accepted attorney Scalisi lasted at the most 10-minuted and both retained counsel McDonnell and attorney Scalisi - hired by Mr. McDonnel without Petitioner's consent - left the MDC. It should be noted, retained attorney McDonnell and attorney William Scalisi "do not belong to the same firm or agency" as required in the instructions in the "unsigned" Form G-01 submitted to the trial court for approval of substitution of counsel. **Appx. E(a).**

Notwithstanding such disapproval by Petitioner to accept attorney Scalisi as his legal representation at trial, Mr. Scalisi ~~is not~~ retained attorney Mr. McDonnell appear as Petitioner defense attorney "requesting the district court to allow him to represent Petitioner at his up-coming trial." Cf. **Appendix E(a) with Appendix E(b).** In fact, the district court in denying Petitioner an evidentiary hearing on this very issue erroneously stated that Mr. Scalisi was "appointed." See **Appx. "B" at 4**, stating "Defendant's allegations misstate the facts. Scalisi was appointed...". The contrary is true here. The district court also recognized that Petitioner argued that his "consent" was made under duress, but that he consented to Scalisi's representation in court and that such solemn declaration in open court carry a strong presumption of verity that Defendant has not overcome." Id. (citing Blackledge, 431 U.S. at 74.

Here, it obviously clear, Petitioner's Sixth Amendment right to effective assistance of trial counsel of both his retained attorney Mr. McDonnell and trial attorney Mr. Scalisi was evidentiary clear violation of his fundamental constitutional rights as alleged by the Defendant that required the district court to conduct an evidentiary hearing to resolve the "verasity" of his allegations and the uncontested attorneys, not the court's duty to defend the attorney.

REASONS FOR GRANTING THE PETITION

The Court should reverse Petitioner's case as he claimed in his 28 U.S.C. §2255 that his Sixth Amendment Constitutional right to the effective assistance of counsel occur both by his retained attorney Michael McDonnell, and the suddenly introduction of an unfamiliar with the case attorney at the very last minute to his trial attorney Peter Scalisi. The District Court, despite the Petitioner's factual allegations in his §2255 motion, denied an otherwise mandatory evidentiary hearing under the statute.

In his §2255 motion, Petitioner alleged that at trial his attorney failed to present, in front of the jury, available evidence to the defense to rebut the prosecutor's star witness and the author of the "Investigative Report" own lies and false accusations against Petitioner in purposely wrongly identifying him as the person making calls to other co-defendants at the parking lot to consummate the drug transaction during the arrest at the Fontana, Ca., parking lot, including photos of the co-defendant Ramiro GIL-GUERRA (a.k.a. "CHATO") making the calls "next to the accusing star witness Detective CORTEZ," but the trial attorney Scalisi failed to present to the jury, thereby rendering Constitutional deficient legal representation in violation of Petitioner's Sixth Amendment right guaranteed under the U.S. Constitution as this Court found in *Strikland v. Washington*, 466 U.S. 668 (1984); *United States v. Glover*, 531 U.S. 198 (2001).

Despite such factual truthful allegations of Petitioner in his §2255 motion, the district court, rather than deciding the issue of the "POTHO" of co-defendant GIL-GUERRA demonstrating the real person making the telephone calls during the drug transaction, the district court "construe" his claims by stating: "Defendant also argues counsel was deficient in failing to present his 'phone' records, which Defendant asserts would have shown that he did not hold a leadership position in the illegal drug transaction. The court finds counsel's decision not to introduce Defendant's 'phone' records reasonable. Had counsel introduce the full 'phone' record, the government **could** have introduced expert testimony to show that drug traffickers often have multiple phones." **Appx. "B".**

The district court denied Petitioner's §2255 motion without an evidentiary hearing. The Ninth Circuit in *United States v. Reyes-Bosque*, 624 Fed. Appx. 529, 530 (9th Cir. 2015), held that "[T]he standard for granting an evidentiary hearing under §2255 entails assuming the truth of [prisoner's] factual allegations." *Id.* (quoting *United States v. Leonti*, 326 F.3d 1111, 1121 (9th Cir. 2003)). There, the Ninth Circuit held that "[A] prisoner can therefore "demonstrate that the district court erred in not granting an evidentiary hearing [by showing he] (1)...allege[d] specific facts [in the motion] which, if true, would entitle him to relief; and [that] (2) the petition, files and record of the case [did not] conclusively show that he [wa]s entitle to relief.'" (quoting *United States v. Howard*, 381 F.3d 873, 877 (9th Cir. 2004)(citing 28 U.S.C. §2255)).

Here, the district court 'failed' to address petitioner's Claim 1B.1 articulated in his §2255 motion claiming prejudice in violation of his Sixth Amendment right to the effective assistance of trial counsel by the failure of trial counsel to use available evidence that Petitioner handed him during trial, specifically **the photos of co-defendant GIL-GUERRA** (a.k.a. "CHATO") making precisely the phone calls to consummate the drug transaction at the Fontana, Ca., parking lot that Detective CORTEZ was accusing Petitioner of. The photos were so important to vindicate Petitioner as they portait co-defendant GIL-GUERRA making such phone calls at the parking lot **next to Detective CORTEZ**.

See Appendix "C".

The district court instead only contested to partial of Petitioner's Claim 1B.1 in his §2255 motion with a hypothesis answer stating "[H]ad counsel introduced the full phone records (of Petitioner), the government **could have** introduced expert testimony to show that drug traffickers often have multiple phones." **See Appx. "B" at 3.** Instead of granting an "evidentiary hearing" to resolve the constitutional claims Petitioner made, the district court stated only that "Counsel's tactical decision to establish the same facts using alternative evidence is an improper for a claim of ineffective assistance of counsel." **Id.** (quoting Santos, 741 F.2d at 1169).

In addition, the district court was incorrect by asserting that trial attorney Peter W. SCALISI "was appointed." In his §2255 motion (Claim Two), Petitioner argued that he was denied counsel of choice when at the last minute, a new and different attorney (Peter Scalisi) was substituted for his chosen retained counsel Michael McDonnell. The district court recognized that Petitioner argued in his §2255 motion that "Scalisi provided ineffective assistance of counsel in violation of his Sixth Amendment." **Id. at 4.**

The district court was completely in error here. Nowhere in the district court's docket sheet shows that the court had "appointed" attorney Scalisi as Petitioner's trial counsel or that retained chosen attorney Michael R. McDonnel file in the district court a motion for withdrawal of counsel. Instead, court record facts ~~show~~ a NOTICE OF APPEARANCE was filed on May 14, 2014 (Docket #104) - six days before Petitioner's trial was to commence, and without "notifying" the Defendant of such substitution. Indeed, cont-

rary to the district court's erroneous assertions that "Defendant's allegations misstate the facts," Appx. B at 4, not only did Petitioner was correct in his assertions but the record facts shown here demonstrate that Petitioner indeed never consented to the change of attorneys as his signature don't appear on any form filed by a attorney Scalisi consenting to his representation. Cf. Appx "E(a) Dock. No.104, with Appx. E(b)," Docs Nos. 40-41, (Request For Approval of Substitution of Counsel (Form G-01)).

This record facts demonstrate the district court was in error, not only on its erroneous assertion that Scalisi was "appointed" but in its failure to find the constitutional violations under Petitioner's Sixth Amendment credible despite the fact that the attorney was indeed replaced at the last minute before his trial and compelled to accept him under "duress" as alleged in his initial §2255 motion that prejudice the Defendant.

Despite such allegations with record facts, the district court failed to address his issues, denied the Defendant §2255 motion and decline to issue a Certificate of Appealability. Petitioner thereafter, requested a Certificate of Appealability ("COA") to the Ninth Circuit Court, which was denied eight months later on Agust 22, 2019, see Appx. "A", supposedly on a "procedural ruling." Id.

However, Petitioner has complied to the timeline of every rule and procedure by filing his motions to each court on a timely basis according to the Rules of Federal Procedures, including his Notice of Appeal and a request for a COA to both courts. Thus the Ninth Circuit Court's denial of a COA should be overruled by this Honorable Court and remand the case to the Ninth Circuit Court with instructions to direct the district court to grant an evidentiary hearing to the Defendant to address his Sixth Amendment right to the effective assistance of competent counsel that cause him prejudice as he claim in his initial §2255 motion.

Court record facts clearly shows that the failure of both the district court and the court of appeal to permit petitioner to address his Sixth Amendment right to the effective assistance of competent counsel constituted an unconstitutional dereliction of duty and clear miscarriage of justice that prejudice the Defendant here.

For all the above reasons, Petitioner respectfully request this Honorable Court to remand his case to the Ninth Circuit Court of Appeals instructing them to vacate and remand the order of the District Court denying his §2255 Motion and direct the district court to conduct an evidentiary hearing concerning his claims of fundamental Sixth Amendment right violations to the effective assistance of trial counsel, to avoid a miscarriage of justice.

//

//

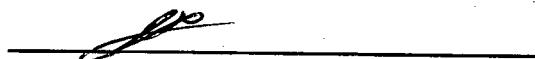
//

//

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature is written over a horizontal line.

Date: September 20, 2019